

# Advice Memorandum

DATE: June 6, 1997

TO : James J. McDermott, Regional Director  
Region 31

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Avery Dennison  
Cases 31-CA-22125, 22131

530-6050-0825-3300  
530-6067-4011-7700  
530-6067-4011-4600

This case was submitted for advice as to whether the Employer violated Section 8(a)(5) by unilaterally relocating work from its Monrovia facility to other facilities and permanently laying off Monrovia employees.

## FACTS

Avery Dennison (the Employer) manufactures self-adhesive labels and other office products. It operates several facilities nationwide. The Graphic Communications Union, District Counsel No. 2 (the Union) represents the employees at the Employer's Monrovia, California facility. The parties' most recent collective-bargaining agreement was effective from October 1993 through September 1995. Since then the parties engaged in bargaining but did not reach agreement on a new contract. A decertification petition is blocked by the current charges.

Bargaining unit work at Monrovia has historically consisted of "compounding," "coating," and "slitting." The compounding process consists of mixing chemicals to make adhesive. The coating process consists of applying adhesive to one sheet of paper and fastening another sheet of paper, resulting in 60' wide rolls of product to be used as labels. The slitting process consists of cutting the 60' rolls into lengths and widths per customer specifications. Coating is performed on two machines, the C-20 and the C-30. Prior to the events at issue here, the Employer used Monrovia's C-30 machine to produce laser-printer labels for a single customer located in Georgia; the Employer used Monrovia's C-20 machine to produce 200 different types of film labels (using film rather than

paper as the base material) for multiple customers throughout the country.

In approximately January 1996, the Employer unilaterally transferred the laser-printer label work it had been doing on its C-30 machine at Monrovia to its Ft. Wayne, Indiana plant. Soon thereafter, the Employer moved C-30 "unfinished label" work (production of adhesive paper in large rolls to be sent to various distribution centers for slitting into a variety of lengths and widths for numerous customers) from its Quakerstown, Pennsylvania facility to Monrovia to replace the work moved to Ft. Wayne. However, since the "unfinished label" work did not require the services of slitters at Monrovia, the ultimate effect of the work relocations was the elimination of slitter jobs at Monrovia. Some slitters were laid off; others voluntarily transferred to slitter jobs at the Rancho Cucamonga distribution center in anticipation of layoffs. The Employer was able to do the relocated work at the Ft. Wayne facility without hiring additional employees there.

In approximately July 1996, the Employer unilaterally transferred its entire C-20 operation at Monrovia to its Painesville, Ohio facility, which had been manufacturing similar products. The Employer laid off all but two of the remaining Monrovia slitters as well as coaters, warehousemen and quality assurance employees associated with that work. The Employer was able to do the relocated work at the Painesville facility without hiring additional employees there.

The Employer asserts that it transferred the laser-printer label work to Ft. Wayne because: (1) it needed to use a less expensive water-soluble adhesive, rather than the solvent adhesive it had been using, in order to compete in the highly competitive laser-printer label market, and Ft. Wayne had the capability of using water-soluble adhesive while Monrovia did not; (2) Ft. Wayne had the capacity to meet the growing customer demand for this product and Monrovia did not; and (3) Ft. Wayne was closer to the Georgia packaging facility, which packaged the product for the customer. The Region secured from the Monrovia plant manager an affidavit mentioning these bases for the relocation decision. However, the Employer has not provided any documentation regarding the decision or any

other evidence supporting the authenticity of its assertions or demonstrating that its decision was motivated by those factors, and not by the labor cost savings the Employer secured through this work consolidation.

The Employer asserts that it relocated the C-20 film label work to Painesville because: (1) there was a decreased demand for this product and all of the demand could be accommodated at one facility; (2) there was a demand for less expensive water-soluble adhesive, which Painesville, and not Monrovia, was equipped to use; and (3) customers had complained about the quality of film labels made at Monrovia. The Region has secured from the Monrovia plant manager an affidavit mentioning these bases for the decision. However, in response to the Region's requests for additional evidence, the Employer has provided a single "strategy" document. One of the reasonable interpretations of that document is that the Employer was primarily motivated by a desire to "reduce head count," and thereby accrue major savings in "plant expenses," and was only secondarily motivated by its other asserted concerns.<sup>1</sup>

#### **ACTION**

We conclude that, absent settlement, the Region should issue a complaint asserting that the Employer violated Section 8(a)(5) by unilaterally relocating work from its Monrovia plant to its Ft. Wayne and Painesville facilities.<sup>2</sup>

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<sup>1</sup> The Employer asserts that this document references only the motivations for the C-20 work relocation, and not for the C-30 work relocation. However, the document appears to reference both relocations as part of a single strategy of converting the Monrovia plant to a "satellite facility" to the Rancho Cucamonga coating facility, with operative "reduc[tion in] head count from 138 to 37 [including reductions in non-unit employees] and plant expenses from \$15.1MM to \$5.6MM."

<sup>2</sup> We agree with the Region that neither the Employer's transfer of work from the non-union Quakerstown facility to Monrovia, nor its "transfer" of seven Monrovia slitters who applied voluntarily to work at Rancho Cucamonga, pursuant to a past practice of unilaterally posting such openings, violated Section 8(a)(5). We do not address the Region's

The analysis to apply in determining whether these work relocation decisions were mandatory subjects of bargaining is set out in the Board's Dubuque Packing decision.<sup>3</sup> Under Dubuque Packing, the General Counsel, in order to make a prima facie showing that a relocation decision is a mandatory subject, has the burden of showing that the relocation involves the replacement of one group of employees for another, "unaccompanied by a basic change in the nature of the employer's operation."<sup>4</sup> The employer then has the burden of coming forward with evidence to rebut the prima facie case or the burden of proving certain defenses, discussed below.

To rebut the prima facie showing, the employer might show, for example, that the work at the new location is not the same as the work formerly done at the old location because the work at the new location "varies significantly from the work performed at the former plant" or that the

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conclusions, discussed in the submission but apparently not submitted for advice, that: (1) the Employer did not violate Section 8(a)(1) through its statements to employees regarding the upcoming decertification election; (2) the Employer did not relocate the work in order to rid Monrovia of Union supporters, in furtherance of the decertification effort and in violation of Section 8(a)(3); and (3) the Employer did not unlawfully fail to engage in effects bargaining.

<sup>3</sup> 303 NLRB 386, 391 (1991). See also Guideline Memorandum Concerning Dubuque Packing Co., GC Memorandum 91-9, August 9, 1991 (hereinafter "GC Guideline"). Holmes & Narver, 309 NLRB 146 (1992), which involved an employer's streamlining of its workforce at a single facility to accomplish the same work with fewer employees, is also instructive. However, the Board's finding there that it need not apply the Dubuque test in order to determine that the employer's layoffs were a mandatory subject of bargaining would not apply to relocations of work between facilities, which potentially involve more substantial and complicated capital investment decisions.

<sup>4</sup> 303 NLRB at 391.

work removed from the old location has been discontinued completely.<sup>5</sup> Alternatively, the employer might establish that the relocation decision in fact "involves a change in the scope or direction of the enterprise."<sup>6</sup>

Failing that, the employer can still raise certain defenses to show that it had no bargaining obligation regarding the relocation decision. First, it can show that labor costs, direct and indirect,<sup>7</sup> were not a factor in its decision, thereby raising for the first time in this analytical framework the issue of the employer's actual motivation for the relocation decision. Dubuque Packing "plac[es] on the employer the burden of adducing evidence as to its motivation for the relocation decision."<sup>8</sup> "[The employer] alone, more often than not, is the party in possession of the relevant information" regarding the motivation underlying its decision.<sup>9</sup> Further, placing the burden on the employer "will . . . require the employer to evaluate all the factors motivating its relocation decision when determining whether its course of action should include negotiations with the union."<sup>10</sup> The employer, in establishing this defense, can rely only on the considerations that it actually had taken into account at the time that it decided to relocate the unit work.<sup>11</sup>

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<sup>5</sup> 303 NLRB at 391.

<sup>6</sup> 303 NLRB at 391. See cases cited in GC Guideline at 5-6, n. 11.

<sup>7</sup> Direct labor costs are monetary items, wages and fringe benefits, while indirect labor costs are nonmonetary items that can also have an economic impact. GC Guideline at 6.

<sup>8</sup> 303 NLRB at 392. See GC Guideline at 6-7.

<sup>9</sup> Id.

<sup>10</sup> 303 NLRB at 392, n. 16.

<sup>11</sup> 303 NLRB at 392, n. 14; GC Guideline at 6-7.

Second, even if such costs had been a factor in deciding to relocate the work, the employer may prove that, at the time it made its decision, the evidence was clear that the union could not have offered sufficient "concessions that approximate, meet, or exceed the anticipated costs or benefits that prompted the relocation decision."<sup>12</sup> The Board has placed a heavy burden on employers claiming this defense; an employer must establish either that: (1) even absent the labor cost considerations, it would have relocated the work for non-economic or other reasons that the union could not address, or (2) it anticipated quantifiable savings from the relocation and the union could not have provided the same financial benefit through concessions.<sup>13</sup> With regard to the latter approach, the Board suggests that one way to assess a union's ability with respect to concessions is to calculate what the union could offer "if the employees were willing to work for free. . . ."<sup>14</sup> While Dubuque does not require it, an employer "would enhance its chances of establishing this defense by describing its reasons for relocating to the union, fully explaining the underlying cost or benefit considerations, and asking whether the union could offer labor cost reductions that would enable the employer to meet its profit objectives."<sup>15</sup>

Here, the General Counsel can establish a prima facie case, which the Employer has not rebutted, that the Employer simply relocated unit work without making any significant change in the nature or direction of its business. The Employer is still making the same products, using the same basic process, for the same customers. Concededly, the Employer is in the process of changing one part of its product -- the adhesive -- which change may well alter or have altered the production process in some way. However, the Employer has not explained the alleged

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<sup>12</sup> 303 NLRB at 391.

<sup>13</sup> 303 NLRB at 391, 395-96; Owens-Brockway Plastic Products, 311 NLRB 519 (1993).

<sup>14</sup> 303 NLRB at 392, n. 13.

<sup>15</sup> 303 NLRB at 392.

changes in the manufacturing process, nor demonstrated that because of those changes the work now being done at Ft. Wayne and Painesville "varies significantly from the work performed at [Monrovia]." <sup>16</sup> The asserted motivation for the change in adhesive -- to enable the Employer to produce cheaper labels, not a substantively different product -- indicates that the Employer has not abandoned a product line or changed the product in a way that reflects a substantial change in its business. <sup>17</sup>

Turning to the Dubuque affirmative defenses, the Employer has not established that labor costs were not a factor in its decisions. It would appear that labor costs were at least "a" factor, since the relocations permitted the Employer to perform the same work with fewer employees and, at least with regard to the C-20 relocation, the Employer's own documentation demonstrates that this consolidation, and consequent savings of millions of dollars, was one motivation for the relocation.

The Employer has asserted the alternative defense that, conceding labor costs were a factor in the decision, any concessions that the Union could offer would have been insufficient to "approximate, meet or exceed the anticipated costs or benefits that prompted the relocation decision." <sup>18</sup> On the record before us, the Employer has not established this defense.

Thus, although the Employer asserts that it relocated the C-30 work for several reasons as to which the Union could not have had meaningful input, it has provided no evidence in support of those assertions. <sup>19</sup> Indeed, it has

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<sup>16</sup> 303 NLRB at 391.

<sup>17</sup> Thus, the Employer's reliance on First National Maintenance, 452 U.S. 666 (1981), and Noblitt Bros., 305 NLRB 329 (1992) (employer fundamentally changed its marketing and customer service operation from a showroom-based system to a telemarketing system), is misplaced.

<sup>18</sup> Dubuque Packing, 303 NLRB at 391.

<sup>19</sup> The Employer's contention that it has no documentation whatsoever regarding the reasons for that major work

not even explained its bare assertions that the Monrovia plant was not capable of developing the desired water-based adhesive and could not have handled the increased customer demand for the laser printer labels. With regard to relocation of the C-20 work, the Employer itself asserts as one of its primary motivations the desire to accommodate the decreased demand for this product at one facility, i.e. to save unnecessary labor and other plant operating costs by consolidating the work.<sup>20</sup> Moreover, the primary "justification" for the relocation, as described in the Employer's sole "strategy" document, was the expected decrease in plant operating expenses. The other two asserted motivations -- Monrovia's inability to develop a water-based adhesive and customer complaints about the quality of Monrovia products -- are listed simply as "other justifications" for the transfer. Apart from this document, there is no evidence which in any way supports the Employer's assertions.<sup>21</sup>

With regard to both relocations, the Employer has stated that "there was no single overriding reason for the transfer[s]" but rather "a number of reasons contributed to the decision[s]." That suggests that the Union's meaningful input into one or some of the factors motivating the relocations might have been sufficient to change the Employer's decisions even if the Union could not have addressed all of the motivating factors.

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relocation is dubious and may permit the drawing of adverse inferences.

<sup>20</sup> Indeed, since the Employer has not moved the C-20 machine (it maintains a skeleton crew that serves as "emergency back-up" to the Painesville C-20 line), or shut down any of its facility space in Monrovia, it would appear that most if not all of the savings in operating costs were savings in labor costs.

<sup>21</sup> The Employer's assertion regarding alleged customer complaints about the quality of Monrovia products seems particularly capable of proof and not credible in the absence of any proof.

Finally, the Employer has not asserted, much less demonstrated, that the anticipated quantifiable labor cost and other cost savings from the relocations were so great that the union could not have provided the same financial benefit through concessions.<sup>22</sup>

Accordingly, the Region should issue a Section 8(a)(5) complaint, absent settlement, because the Employer has failed to rebut the prima facie case by adducing evidence, which the Employer is in a unique position to possess, showing that labor costs were not a factor in the work transfers, or that the work would have been transferred for other reasons which the Union could not address.

B.J.K.

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<sup>22</sup> Compare Nu-Skin International, 320 NLRB 385, 386 (1995) (employer demonstrated that the savings engendered by its relocation to a highly automated facility were almost as much as its entire labor costs at the closed facility).